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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130722645-4453-01]

RIN 0648-BD53

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Eastern Pacific Ocean, Whale Shark Conservation Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes under the Tuna Conventions Act to implement a resolution of the Inter-American Tropical Tuna Commission (IATTC) intended to conserve whale sharks (Rhincodon typhus) in the Eastern Pacific Ocean (EPO). This proposed rule, if adopted, would prohibit setting a purse seine net on a whale shark, and would require certain measures to protect whale sharks in the event that a whale shark is encircled in a purse seine net. This proposed rulemaking is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: Comments must be submitted in writing by [Insert date 20 days after date of publication in the FEDERAL REGISTER]. A public hearing will be held from 1 p.m. to 4 p.m. PST, June 11, 2014 in Long Beach, CA.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0118, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0118, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Attn: Chris Fanning, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2013-0118” in the comments.
- Public hearing: The public is welcome to attend a public hearing and offer comments on this proposed rule from 1 p.m. to 4 p.m. PST, June 11, 2014 at 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. The public may also participate in the public hearing via conference line: 1-888-790-6181, passcode 14789.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Chris Fanning, NMFS West Coast Region (see address above) and by e-mail to OIRA_Submission@omb.eop.gov. Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available via the

Federal e-Rulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2013-0118 or contact with the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Regional Office, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115-0070, or RegionalAdministrator.WCRHMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Chris Fanning, NMFS, 562-980-4198 or Heidi Taylor NMFS, 562-980-4039.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. The full text of the 1949 Convention is available at:

http://www.iattc.org/PDFFiles/IATTC_convention_1949.pdf. The IATTC facilitates scientific research into, as well as conservation and management of, highly migratory species in the IATTC Convention Area (defined as the waters of the EPO). Since 1998, conservation resolutions adopted by the IATTC have further defined the Convention Area as the area bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years, and regularly assesses the status of tuna and billfish stocks in the EPO to determine appropriate catch limits and other measures deemed necessary to prevent overexploitation of these stocks and to promote sustainable fisheries. Current IATTC member countries include: Belize, Canada, China, Chinese Taipei (Taiwan), Colombia, Costa Rica, Ecuador, El Salvador, the European Union, France, Guatemala, Japan, Kiribati, the Republic of Korea, Mexico, Nicaragua, Panama, Peru,

the United States, Vanuatu, and Venezuela. Bolivia, Honduras, Indonesia and the Cook Islands are cooperating non-members.

International Obligations of the United States under the Convention

As a Contracting Party to the 1949 Convention and a member of the IATTC, the United States is legally bound to implement resolutions adopted by the IATTC. The Tuna Conventions Act (16 U.S.C. 951-962) directs the Secretary of Commerce, after approval by the Secretary of State, to promulgate such regulations as may be necessary to implement resolutions adopted by the IATTC. The Secretary's authority to promulgate such regulations has been delegated to NMFS.

IATTC Conservation Decisions in 2013

At its 85th Meeting, in June 2013, the IATTC adopted by consensus the Resolution on Collection and Analysis of Data on Fish-Aggregating Devices (FADs) (Resolution C-13-04).

(Active resolutions of the IATTC are available at:

<http://www.iattc.org/ResolutionsActiveENG.htm>.) Three measures in Section 4 of Resolution C-13-04 address the potential impacts of purse seine fishing operations on the sustainability of the whale shark. The first provision directs countries to prohibit setting any purse seine on a school of tuna associated with a live whale shark if the animal is sighted prior to the commencement of the set. In the event that a whale shark is encircled by a purse seine net, the second and third provisions of Resolution C-13-04 direct countries to require that purse seine vessel operators ensure all reasonable steps are taken to ensure the safe release of the shark, and report the incident to the relevant governmental authority, including the number of individual whale sharks, details of how and why the encirclement happened, where it occurred, steps taken to ensure safe release, and an assessment of the life status of the whale shark on release (including whether the

animal was released alive, but subsequently died). As per section 4, paragraph 16 of Resolution C-13-04, the whale shark provisions “shall enter into effect on July 1, 2014”. This effective date is necessary for the United States to fully satisfy its obligations as a member of the IATTC. The remaining provisions of Resolution C-13-04 pertaining to Fish Aggregating Devices (FADs) data collection and identification will be addressed in a later rulemaking.

Proposed Action

This proposed rule, if adopted, would implement Resolution C-13-04 which includes conservation measures for whale sharks. The regulations would apply to owners and operators of U.S. purse seine vessels while fishing commercially for tuna in the Convention Area. The Department of State has approved implementation of Resolution C-13-04 by this rulemaking.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is as follows:

It is extremely unlikely that this rulemaking will result in a significant change in fishing operations. According to observer data report summaries from the previous 10 years supplied by

the IATTC, U.S. large (greater than 363 metric tons, or 400 short tons, in carrying capacity) purse seine vessels with 100 percent observer coverage in the EPO have had two interactions with whale sharks: once each in 2006 and 2009. In both instances, the encirclement of the whale shark was incidental to a fish aggregating device (FAD) directed set, and the whale shark was released and presumed unharmed. No data exists for purse seine vessels smaller than 400 short tons carrying capacity having interactions with whale sharks. Given the rare occurrence of observed U.S. purse seine vessel incidental interactions with whale sharks in the EPO, and given whale sharks are not a target species of the tuna purse seine fishery and have no commercial value to tuna canneries, the proposed action is not expected to affect or change current operating procedures or result in a reduction in associated revenues.

On June 20, 2013, the U.S. Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for finfish fishing from \$4.0 million to \$19.0 million, shellfish fishing from \$4.0 million to \$5.0 million, and other marine fishing from \$4.0 million to \$7.0 million. NMFS conducted its analysis for this action using the new size standards.

Estimates of ex-vessel revenues in the U.S. purse seine fishery in the IATTC Convention Area since 2005, which would be indicative of current conditions, are confidential and may not be publicly disclosed because of the small number of vessels in the fishery. Since 2004, only two U.S. purse seine vessels in class sizes 1 to 6 have made landings each year on average. Only two US purse seine vessels landed fish in this fishery from 2005 through 2008, thus the landings and revenue data from these years are confidential and may not be released. Based on historic and recent U.S. purse seine vessels listed on the IATTC Active Purse Seine Vessel Register, there are four class size 6 vessels and no class size 5 and 4 vessels likely to be affected by the rule in the

near future. Two vessels transited through the IATTC Convention Area in 2010 but did not fish. Only three and two class size 6 vessels fished for tunas in IATTC Convention Area in 2011 and 2012, respectively. In 2013 there were 10 vessels registered to operate in the IATTC Convention Area, including the smaller purse seine vessels that typically fish for coastal pelagic species (e.g., sardines). The average annual per vessel revenue in 2013 for the registered vessels operating in the IATTC Convention Area has been below \$19 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner. Based on the analysis above, the proposed action, if adopted, will not have adverse or disproportional economic impact on these small business entities. Because the proposed action would not have a significant impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis is not required and none has been prepared. NMFS solicits public comment on the analyses in light of the new size standards.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by the Office of Management and Budget (OMB) under control number 0648-0387. Public reporting burden for whale shark interaction reporting is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and record keeping requirements, Treaties.

Dated: June 3, 2014

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart C is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951-961 et seq.

2. In § 300.22, paragraph (a) is redesignated as paragraph (a)(1), and paragraph (a) heading and paragraph (a)(2) are added as follows:

§ 300.22 Eastern Pacific fisheries recordkeeping and written reports.

(a) Logbooks.

* * *

(2) Whale shark encirclement reporting. The owner and operator of a purse seine fishing vessel of the United States that encircles a whale shark (Rhincodon typus) while fishing commercially in the Convention Area must ensure that the incident is recorded in the comment section of the Log that is required by this paragraph (a). The Log must describe, among other things: the number of individual whale sharks with which the vessel interacted, details of how and why the encirclement happened, where it occurred, steps taken to ensure safe release, and an assessment of the life status of the whale shark upon release (including whether the animal was released alive, but subsequently died).

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3. In § 300.24, paragraphs (v), (w), and (x) are added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(v) Fail to maintain, submit, or ensure submission of a Log that includes all the information required in § 300.22(a).

(w) Set or attempt to set a purse seine on or around a whale shark (Rhincodon typus) in contravention of § 300.25(e)(5).

(x) Fail to release a whale shark encircled in a purse seine net of a fishing vessel as required in § 300.25(e)(6)

4. In § 300.25, paragraphs (e)(5) and (e)(6) are added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(e) * * *

(5) Owners, operators, and crew of fishing vessels of the United States fishing commercially for tuna in the Convention Area may not set or attempt to set a purse seine on or around a whale shark (Rhincodon typus) if the animal is sighted prior to the commencement of the set or the attempted set.

(6) The crew, operator, and owner of a fishing vessel of the United States fishing commercially for tuna in the Convention Area must release as soon as possible, any whale shark that is encircled in a purse seine net, and must ensure that all reasonable steps are taken to ensure its safe release.

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